

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Consortio Colegios Católicos	)	
Arquidiócesis de San Juan	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

ATT: Telecommunications Access Policy Division, Wireline Competition Bureau

**REQUEST FOR WAIVER**

Consortio Colegios Católicos Arquidiócesis de San Juan (hereinafter, the “Consortium”) and its members, through counsel, hereby petition the Wireline Competition Bureau (“Bureau”) of the Federal Communications Commission’s (“FCC” or “Commission”) for a limited waiver of Section 54.720 of the Commission’s rules, which requires that E-Rate applicants file appeals with the Universal Service Administrative Company (“USAC”) within sixty days from the date of USAC’s decision.<sup>1</sup> Specifically, the Consortium asks the Bureau to waive Section 54.720 for a limited period of ten business days from the date of grant of the instant request. A limited waiver will permit the Consortium to appeal the denial of its Funding Year 2016 applications, which it was not able to do due to the unprecedented disruption caused by Hurricanes Irma and Maria in Puerto Rico.

**I. Background**

The Consortium represents thirty-six private Catholic schools in the Commonwealth of Puerto Rico. The Consortium members have an estimated combined enrollment of almost 11,000 students in grades K through 12.

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<sup>1</sup> 47 C.F.R. § 1.3.

On February 22, 2016, the Consortium filed FCC Form 470 No. 160029101 soliciting bids for E-Rate services for Funding Year 2016. On July 18, 2016, the Consortium filed FCC Form 471 Nos. 161058738, 161058750 and 161058971 for Funding Year 2016. Collectively, the applications requested approximately \$936,000 in E-Rate funds. On July 25, 2017, USAC denied the applications for Funding Year 2016. USAC's denial of the Funding Year 2016 applications arises out of the same competitive bidding process that caused USAC to deny the Consortium's applications for Funding Years 2013, 2014 and 2015, a matter that is currently pending before the Bureau pursuant to a *Request for Review* filed by the Consortium in August of 2017.<sup>2</sup>

Pursuant to Section 54.720 of the Commission's rules, the Consortium had sixty days (until September 25, 2017) to file an appeal with USAC.<sup>3</sup> Puerto Rico was hit by Hurricanes Irma and Maria on September 7, 2017, and September 20, 2017, respectively. As the Commission knows from the work of its Hurricane Recovery Task Force,<sup>4</sup> the record in PS Docket No. 17-344 regarding the 2017 hurricane season,<sup>5</sup> and the visits to Puerto Rico by Chairman Pai and members of the Hurricane Recovery Task Force,<sup>6</sup> the hurricanes caused catastrophic flooding, destroyed homes, and left the island with no power, no water, and virtually no communications services. The Commission's Disaster Information Reporting System with respect to areas impacted by Hurricane Maria, which was activated "for an unprecedented 183

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<sup>2</sup> See Consorcio Colegios Católicos Arquidiócesis de San Juan, Requests for Review of Decisions of the Universal Service Administrator, CC Docket No. 02-6 (filed Aug. 14, 2017).

<sup>3</sup> Sixty days from July 25, 2017 was Saturday, September 23, 2017. Because the deadline fell on the weekend, the appeal would have been due on the next business day, which was September 25, 2017.

<sup>4</sup> See FCC News, *FCC Chair Announces Hurricane Recovery Task Force* (Oct. 6, 2017).

<sup>5</sup> See Public Notice, DA 17-1180, *Public Safety and Homeland Security Bureau Seeks Comment on Response Efforts Undertaken During 2017 Hurricane Season*, PS Docket No. 17-344 (PSHSB rel. Dec. 7, 2017).

<sup>6</sup> See FCC News, *Chairman Pai to Visit Puerto Rico to Assess Maria Recovery Efforts* (Nov. 3, 2017); FCC News, *Chairman Pai to Visit Puerto Rico & U.S. Virgin Islands in March* (Feb. 21, 2018).

days because of the severity of the hurricane's impact on communications infrastructure," was just deactivated seven days ago.<sup>7</sup>

On October 6, 2017, the Bureau issued an Order (*Hurricane Waiver Order*) that, among other things, waived the Section 54.720 deadline for the filing of appeals with USAC for 150 calendar days.<sup>8</sup> Specifically, the Bureau stated in the *Hurricane Waiver Order* that "Program participants located in the Affected Disaster Areas who may have already missed these deadlines due damage or disruption caused by the Hurricanes may submit the required filings up to 150 calendar days from the release date of this Order."<sup>9</sup>

## **II. A Limited Waiver of Section 54.720 of the Commission's Rules Would be in the Public Interest Given the Extremely Unusual Circumstances Caused by Hurricanes Irma and Maria in Puerto Rico.**

The Commission's rules provide that the Commission may waive any provision of its rules "if good cause therefor is shown."<sup>10</sup> The Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."<sup>11</sup> It is established that the Commission will waive its rules in specific cases only if it determines, after careful consideration of all pertinent factors, that such a grant would serve the public interest without undermining the policy which the rule in question is intended to serve.<sup>12</sup>

The devastation caused by the hurricanes severely disrupted the Consortium's operations for a significant period of time. The storms knocked power out throughout all of Puerto Rico.

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<sup>7</sup> Public Notice, DA 18-289, *FCC's Public Safety & Homeland Security Bureau Announces Deactivation of the Disaster Information Reporting System for Areas Impacted by Hurricane Maria* (rel. Mar. 23, 2018).

<sup>8</sup> Schools and Libraries Universal Service Support Mechanism *et al.*, CC Docket No. 02-6 *et al.*, DA 17-984, Order, 32 FCC Rcd 7456, ¶ 3 (WCB rel. Oct. 6, 2017) (*Hurricane Waiver Order*).

<sup>9</sup> *Hurricane Waiver Order*, ¶ 3 n.11.

<sup>10</sup> 47 C.F.R. § 1.3.

<sup>11</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *citing* *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>12</sup> *See* *WAIT Radio*, 418 F.2d at 1157.

Power restoration efforts were severely hampered due to numerous issues, including the closure of ports and airports, roads rendered impassable due to the severity of the flooding, downed trees, debris and power lines, and lack of fuel for generators. The problem with electricity significantly impaired the restoration of communications services, including telephone and Internet service, which affected the Consortium's ability to access its electronic records, emails and voicemails. The Consortium's small staff also experienced severe difficulties communicating with the member schools to gather the necessary information concerning the Funding Year 2016 applications to prepare and file an appeal with USAC within the period of time provided in the *Hurricane Waiver Order*.

In the *Hurricane Waiver Order*, the Bureau, on its own motion, concluded that the widespread and catastrophic damage caused the hurricanes constituted "extremely unusual circumstances warranting the temporary waiver of the rules."<sup>13</sup> The circumstances presented by the instant Request for Waiver are no different from those relied upon by the Bureau in the *Hurricane Waiver Order* and arise from the same natural disaster. The Consortium estimates that a limited waiver of Section 54.720 providing it with ten business days from the date of grant of the instant Request for Waiver – or similar appropriate relief – would allow it and its members to coordinate and file an appeal with USAC concerning the Funding Year 2016 applications. This narrowly-tailored relief would serve the public interest without undermining the policy which the rule in question is intended to serve.

### **III. Conclusion**

For the reasons stated above, the Consortium respectfully requests a limited waiver of Section 54.720 of the Commission's rules.

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<sup>13</sup> *Hurricane Waiver Order*, ¶ 6.

Respectfully submitted,

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March 30, 2018

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